

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PAUL D. YUSKIEWICZ,	§	
	§	No. 591, 2010
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware, in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	Cr. I.D. No. 0911006667
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: February 17, 2011

Decided: March 4, 2011

Corrected: March 8, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices.

ORDER

This 8th day of March 2011, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Paul D. Yuskiewicz (“Yuskiewicz”), the defendant below, appeals from a Superior Court order denying his motion to suppress evidence, and his subsequent convictions for Driving Under the Influence of Alcohol (“DUI”)¹ and for making an improper turn.² On appeal, Yuskiewicz claims that the trial court erred by denying his suppression motion, in two respects. First, the police had

¹ 21 Del. C. § 4177(a).

² 21 Del. C. § 4152(a).

insufficient facts to support a reasonable and articulable suspicion of criminal activity that would justify a police stop. Second, the police based their authority to stop Yuskiewicz on an erroneous reading of the law, thereby violating his rights under the Fourth and Fourteenth Amendments of the United States Constitution. We find no error and affirm.

2. On November 10, 2009, New Castle County Police Officer Thomas Ford was on routine patrol in the area of Armour Drive and Paulson Drive in Wilmington, Delaware. Officer Ford saw Yuskiewicz making an excessively wide turn, by crossing over the roadway into the opposing lane of traffic, from Armour Drive onto Paulson Drive. Ford followed Yuskiewicz for a few minutes, noticing that Yuskiewicz was driving at “unusually low speeds.”

3. Officer Ford pulled Yuskiewicz over. While checking Yuskiewicz’s driver’s license and registration, Ford detected a strong odor of alcohol and observed that Yuskiewicz’s eyes were glassy. Another police officer, who had arrived to assist Officer Ford, saw two unopened beer bottles in the passenger seat of Yuskiewicz’s car.

4. Based on these observations, the police administered three field sobriety tests certified by the National Highway Traffic Safety Administration, including a walk-and-turn test, a one-legged standing test, and a horizontal-gaze

nystagmus test.³ Yuskiewicz failed all three tests. Based on Yuskiewicz's poor driving, the smell of alcohol, the beer bottles, and the field test results, Officer Ford concluded that Yuskiewicz likely was intoxicated beyond the legal limit, and took him into custody. At police headquarters, Ford administered an intoxilyzer test in accordance with standard police operating procedures. The test results showed that Yuskiewicz had a blood alcohol content level of 0.151, well over the legal limit of 0.08. Yuskiewicz was then charged with DUI and with making an improper turn.⁴

5. Yuskiewicz moved to suppress certain evidence, on the ground that (i) the police did not have sufficient facts demonstrating a reasonable and articulable suspicion of criminal activity justifying the traffic stop; and (ii) the police lacked the authority to stop him, because Officer Ford had misinterpreted the traffic laws. At the suppression hearing, after hearing testimony from Officer Ford, the Superior Court denied Yuskiewicz's motion. The court found that the police had a reasonable and articulable suspicion of criminal activity sufficient to detain Yuskiewicz, because Ford had directly observed Yuskiewicz's illegal turn and his "unusually slow [driving] speeds." After a stipulated bench trial, Yuskiewicz was convicted of DUI and the minor traffic violation. Because this was Yuskiewicz's

³ A horizontal-gaze nystagmus test checks the "involuntary jerking of the eyes."

⁴ 21 *Del. C.* §§ 4177(a), 4152(a).

sixth DUI conviction, he was sentenced to six months incarceration followed by probation. This appeal followed.

6. On appeal, Yuskiewicz claims that the Superior Court erred by denying his motion to suppress evidence, because that evidence was seized in violation of his rights under the Fourth and Fourteenth Amendments of the U.S. Constitution. Specifically, Yuskiewicz argues that the police: (i) failed to provide specific details in the police report that would establish that he committed a traffic violation, and (ii) improperly stopped him for a traffic violation based on Officer Ford's erroneous interpretation of Section 4152(a)(1) of the Delaware traffic law.⁵

7. This Court reviews a trial court's denial of a motion to suppress for abuse of discretion.⁶ Questions of law are reviewed *de novo*, but questions of fact are reviewed for clear error.⁷ A traffic stop and its subsequent investigation must be reasonable under the totality of the circumstances.⁸ We have held that a traffic

⁵ 21 Del. C. § 4152(a)(1).

⁶ *Lopez-Vazquez v. State*, 956 A.2d 1280, 1284 (Del. 2008).

⁷ *Id.* at 1284-85.

⁸ *Caldwell v. State*, 780 A.2d 1037, 1046 (Del. 2001).

stop is reasonable where the police have probable cause to believe that a traffic violation has occurred.⁹

8. Yuskiewicz first claims that the police failed to provide specific facts in the police report that supported a reasonable and articulable suspicion that he committed a traffic violation. He points out that Officer Ford made no note in the police report, nor was he (Ford) able to recall at the hearing, how far Yuskiewicz crossed over the center dividing line or whether any cars were parked on the side of the road. Furthermore, Yuskiewicz contends, his driving speed was not “unusually low.” Moreover, Officer Ford himself testified that it is not unusual for drivers, when being followed by the police, to drive at a slower speed. Given the totality of the circumstances, Yuskiewicz argues, his wide turn in combination with his unusual driving did not constitute a reasonable basis for the police to stop him for driving under the influence.

9. Yuskiewicz’s claim fails, because Officer Ford did not base the stop on a suspected DUI, but, rather, on the traffic violations. At the suppression hearing, Officer Ford testified that Yuskiewicz made an excessively wide turn and crossed into a lane where another vehicle could be driving in the opposite direction. Based on his training and experience, that turn was illegal and unreasonable in the

⁹ *Eskridge v. Voshell*, 593 A.2d 589 (Table), 1991 WL 78471, at *3 (Del. 1991) (“There is reasonable suspicion, and hence probable cause, when a police officer observes a driver committing a traffic violation.”); *see also Whren v. United States*, 517 U.S. 806, 810 (1996).

circumstances. Officer Ford further testified that he conducted the traffic stop after following Yuskiewicz for a few minutes and observing that Yuskiewicz was driving at an “unusually low speeds.” The trial judge found Officer Ford’s testimony credible, and determined that Yuskiewicz had been stopped for both traffic violations.

10. Yuskiewicz cites no authority to support his claim that a police report must include detailed facts about a traffic violation. That Officer Ford personally observed Yuskiewicz’s traffic violations was sufficient to justify the traffic stop.¹⁰ The Superior Court did not abuse its discretion in denying Yuskiewicz’s suppression motion on that ground.

11. Yuskiewicz next claims that Officer Ford’s interpretation of 21 *Del. C.* § 4152 was erroneous. He argues that crossing over the center line of an undivided two-way road is not a *per se* violation of that statute. Thus, because there was no traffic violation, the traffic stop was illegal.

12. Yuskiewicz’s claim lacks merit. Section 4152(a)(1) provides that “[b]oth the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.”¹¹ Although that statute

¹⁰ *McDonald v. State*, 947 A.2d 1073, 1078 (Del. 2008) (concluding that “where police officers are required to act upon actual traffic violations that they observe, [those observations] will provide the quantum of individualized suspicion that is necessary to ensure the police discretion is sufficiently constrained.” (internal quotation marks and citation omitted)).

¹¹ 21 *Del. C.* § 4152(a)(1).

does not expressly state that it is illegal to cross over the center line, it is generally well-understood that crossing into opposing traffic's lane is prohibited.¹² Officer Ford testified that Yuskiewicz's wide turn was objectively inappropriate given the totality of the circumstances, and the Superior Court found that testimony to be credible. Officer Ford, therefore, did not erroneously interpret Section 4152(a)(1).¹³ Moreover, the trial court found that Ford had a reasonable and articulable suspicion to stop Yuskiewicz based on *both* the improper wide turn and his unusually low driving speed. Even were we to disregard Yuskiewicz's illegal right turn, Officer Ford still had sufficient reason to stop Yuskiewicz based on his unusually low driving speed.¹⁴ The trial court, therefore, properly denied Yuskiewicz's motion to suppress.¹⁵

¹² See, e.g., 21 Del. C. § 4114(a) (making it illegal to drive on the wrong side of the road).

¹³ See, e.g., *Walton v. Fireman's Fund Ins. Co.*, 128 So.2d 328, 331 (La. Ct. App. 1961) (finding that the purpose of the statute pertaining to right-hand turns was to require motorists on two-lane roads to keep out of the left or approaching lane of travel when turning to the right); see also *People v. Sikes*, 491 N.E.2d 168, 172 (Ill. App. Ct. 1986) (concluding that the police were justified in stopping a defendant where the defendant had made a right turn from the center of street, rather than from the lane closest to the right-hand side of road).

¹⁴ See 21 Del. C. § 4171 ("No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.").

¹⁵ This is not a case where the traffic law did not apply, or where it was legally impossible for Yuskiewicz to have violated the traffic law. Compare *McDonald*, 947 A.2d at 1079 (finding that the police lacked probable cause to stop a defendant for failure to use a turn signal, because that traffic law did not apply where the defendant was turning from a private parking lot onto a public road, and even if that law applied, the length of the parking lot made it impossible for defendant to have complied).

NOW, THEREFORE, IT IS ORDERED that the judgments of the Superior Court are **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs
Justice